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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,810	01/09/2006	Naoteru Honda	1422-0705PUS1	5357
2292 7590 09/11/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER MERCIER, MELISSA S	
			ART UNIT 1615	PAPER NUMBER
			NOTIFICATION DATE 09/11/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/563,810	Applicant(s) HONDA ET AL.	
	Examiner MELISSA S. MERCIER	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1-9-06, 4-12-06, 4-14-08, 7-7-08</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

Applicants Claim of Priority as a 371 of PCT/JP03/08750 filed on July 10, 2003 is acknowledged.

Information Disclosure Statement

Receipt of the Information Disclosure Statements filed on January 09, 2006, April 12, 2006, April 14, 2008, and July 7, 2008 is acknowledged. Signed copies are attached to this office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is unclear how the composition can comprise 100 parts by weight of a metal salt and 0.05-50 parts by weight of an emulsifier. It is unclear how Applicant is calculating the parts by weight.

Regarding claim 3, it is unclear what the monoesters are. The recitation of the limitation "the monoesters" in line 2 has insufficient antecedent basis for this limitation in the claim.

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Regarding claim 4, it is unclear if Applicant is intending to limit the metal salt to calcium, magnesium, iron, or zinc. The recitation of "comprising" allows for the inclusion of additional compounds. It is suggested Applicant amend the claim to recite "selected from the group consisting of".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-5 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Hojo et al. (US Patent 7,264,834).

Hojo discloses a food additive slurry comprising 100 parts by weight of at least one magnesium ingredient selected from the group comprising magnesium hydroxide, magnesium oxide, magnesium phosphate, for example, and 2-55 parts by weight of at least one emulsion stabilizer selected from a group comprising polyglycerol fatty acid esters having a HLB of 8 or higher (abstract). The particle size of the magnesium ingredient is 1.0um or smaller (column 8, lines 13-15). The additive is to be incorporated into a food composition (column 8, lines 55-56).

Claims 1 and 4-5 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Hojo et al. (US Patent 6,808,726).

Hojo discloses a method of manufacturing a food additive slurry composition comprising a polyvalent metal compound including magnesium hydroxide (column 4, lines 17-19) and an emulsification stabilizer including sucrose fatty acid esters with 8 or more HLB's (column 6, lines 64-66). The particle size of the additive is preferably 0.01um or more (column 7, lines 34-35). The additive is used to in food products (column 1, lines 8-9).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Nanbu et al. (US Patent 6,074,675).

Nanbu discloses a mineral-containing composition including enzymatic ally decomposed lecithin and a water-insoluble mineral. Since the mineral composition shows excellent dispersion stability of the water-insoluble mineral, the mineral composition can be utilized in a wide variety of fields such as foods, cosmetics and industrial products (abstract). Lecithin has an HLB of 4. The water insoluble minerals have a solubility product in water at 25C of 1.0×10^{-7} or less are used, and in particular, metal salts having a solubility product in water at 25C of 1.0×10^{-7} or less are preferably used (column 6, lines 26-35). The particle is size is 0.4um or less (column 7, lines 65-66).

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Regarding claim 4, Applicants attention is drawn to column 6, line 36 through column 7, line 27, which discloses the same minerals are recited in the instant claims and specification for suitable minerals.

The composition can further comprise a non ionic surfactant, such as a polyglycerol ester of a fatty acid which is an ester formed between a polyglycerol and a fatty acid, and its esterification ratio is not particularly limited. The kinds of the fatty acids are not particularly limited. It is desired that the fatty acid has hydroxyl group in a saturated or unsaturated, linear or branched fatty acid having 6 to 22 carbon atoms, preferably 8 to 18 carbon atoms, more preferably 12 to 14 carbon atom (column 3, line 56 through column 4, line 5).

The composition can be incorporated into feeds (column 9, lines 56-57).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/
Examiner, Art Unit 1615

/MP WOODWARD/
Supervisory Patent Examiner, Art Unit 1615